

AMENDED IN ASSEMBLY MARCH 11, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1618

Introduced by Assembly Member Chesbro

February 6, 2014

An act to amend Section 827 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1618, as amended, Chesbro. Juveniles: case file inspection.

Existing law requires the case file of a dependent child or ward of the juvenile court to be kept confidential, except as specified. Existing law authorizes only certain persons to inspect the case file, including, among others, the attorneys for the parties, judges, referees, other hearing officers, and law enforcement officers, who are participating in proceedings involving the dependent child or ward.

This bill would clarify that the authorization for those specified persons to inspect the case file includes persons serving in a similar capacity for, ~~or an authorized representative of,~~ an Indian tribe, reservation, or tribal court when the case file involves ~~an Indian child~~ *a child who is a member of, or is eligible for membership in, that tribe.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 827 of the Welfare and Institutions Code
2 is amended to read:

1 827. (a) (1) Except as provided in Section 828, a case file
2 may be inspected only by the following:

3 (A) Court personnel.

4 (B) The district attorney, a city attorney, or city prosecutor
5 authorized to prosecute criminal or juvenile cases under state law.

6 (C) The minor who is the subject of the proceeding.

7 (D) The minor's parents or guardian.

8 (E) The attorneys for the parties, judges, referees, other hearing
9 officers, probation officers, and law enforcement officers who are
10 actively participating in criminal or juvenile proceedings involving
11 the minor.

12 (F) The county counsel, city attorney, or any other attorney
13 representing the petitioning agency in a dependency action.

14 (G) The superintendent or designee of the school district where
15 the minor is enrolled or attending school.

16 (H) Members of the child protective agencies as defined in
17 Section 11165.9 of the Penal Code.

18 (I) The State Department of Social Services, to carry out its
19 duties pursuant to Division 9 (commencing with Section 10000),
20 and Part 5 (commencing with Section 7900) of Division 12, of the
21 Family Code to oversee and monitor county child welfare agencies,
22 children in foster care or receiving foster care assistance, and
23 out-of-state placements, Section 10850.4, and paragraph (2).

24 (J) Authorized legal staff or special investigators who are peace
25 officers who are employed by, or who are authorized
26 representatives of, the State Department of Social Services, as
27 necessary to the performance of their duties to inspect, license,
28 and investigate community care facilities, and to ensure that the
29 standards of care and services provided in those facilities are
30 adequate and appropriate and to ascertain compliance with the
31 rules and regulations to which the facilities are subject. The
32 confidential information shall remain confidential except for
33 purposes of inspection, licensing, or investigation pursuant to
34 Chapter 3 (commencing with Section 1500) and Chapter 3.4
35 (commencing with Section 1596.70) of Division 2 of the Health
36 and Safety Code, or a criminal, civil, or administrative proceeding
37 in relation thereto. The confidential information may be used by
38 the State Department of Social Services in a criminal, civil, or
39 administrative proceeding. The confidential information shall be
40 available only to the judge or hearing officer and to the parties to

1 the case. Names that are confidential shall be listed in attachments
2 separate to the general pleadings. The confidential information
3 shall be sealed after the conclusion of the criminal, civil, or
4 administrative hearings, and may not subsequently be released
5 except in accordance with this subdivision. If the confidential
6 information does not result in a criminal, civil, or administrative
7 proceeding, it shall be sealed after the State Department of Social
8 Services decides that no further action will be taken in the matter
9 of suspected licensing violations. Except as otherwise provided in
10 this subdivision, confidential information in the possession of the
11 State Department of Social Services may not contain the name of
12 the minor.

13 (K) Members of children's multidisciplinary teams, persons, or
14 agencies providing treatment or supervision of the minor.

15 (L) A judge, commissioner, or other hearing officer assigned
16 to a family law case with issues concerning custody or visitation,
17 or both, involving the minor, and the following persons, if actively
18 participating in the family law case: a family court mediator
19 assigned to a case involving the minor pursuant to Article 1
20 (commencing with Section 3160) of Chapter 11 of Part 2 of
21 Division 8 of the Family Code, a court-appointed evaluator or a
22 person conducting a court-connected child custody evaluation,
23 investigation, or assessment pursuant to Section 3111 or 3118 of
24 the Family Code, and counsel appointed for the minor in the family
25 law case pursuant to Section 3150 of the Family Code. Prior to
26 allowing counsel appointed for the minor in the family law case
27 to inspect the file, the court clerk may require counsel to provide
28 a certified copy of the court order appointing him or her as the
29 minor's counsel.

30 (M) A court-appointed investigator who is actively participating
31 in a guardianship case involving a minor pursuant to Part 2
32 (commencing with Section 1500) of Division 4 of the Probate
33 Code and acting within the scope of his or her duties in that case.

34 (N) A local child support agency for the purpose of establishing
35 paternity and establishing and enforcing child support orders.

36 (O) Juvenile justice commissions as established under Section
37 225. The confidentiality provisions of Section 10850 shall apply
38 to a juvenile justice commission and its members.

39 (P) Any other person who may be designated by court order of
40 the judge of the juvenile court upon filing a petition.

(2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(B) This paragraph represents a presumption in favor of the release of documents when a child is deceased unless the statutory reasons for confidentiality are shown to exist.

(C) If a child whose records are sought has died, and documents are sought pursuant to this paragraph, no weighing or balancing of the interests of those other than a child is permitted.

(D) A petition filed under this paragraph shall be served on interested parties by the petitioner, if the petitioner is in possession of their identity and address, and on the custodian of records. Upon receiving a petition, the custodian of records shall serve a copy of the request upon all interested parties that have not been served by the petitioner or on the interested parties served by the petitioner if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.

(E) The custodian of records shall serve the petition within 10 calendar days of receipt. If any interested party, including the custodian of records, objects to the petition, the party shall file and serve the objection on the petitioning party no later than 15 calendar days of service of the petition.

1 (F) The petitioning party shall have 10 calendar days to file any
2 reply. The juvenile court shall set the matter for hearing no more
3 than 60 calendar days from the date the petition is served on the
4 custodian of records. The court shall render its decision within 30
5 days of the hearing. The matter shall be decided solely upon the
6 basis of the petition and supporting exhibits and declarations, if
7 any, the objection and any supporting exhibits or declarations, if
8 any, and the reply and any supporting declarations or exhibits
9 thereto, and argument at hearing. The court may solely upon its
10 own motion order the appearance of witnesses. If no objection is
11 filed to the petition, the court shall review the petition and issue
12 its decision within 10 calendar days of the final day for filing the
13 objection. Any order of the court shall be immediately reviewable
14 by petition to the appellate court for the issuance of an
15 extraordinary writ.

16 (3) Access to juvenile case files pertaining to matters within the
17 jurisdiction of the juvenile court pursuant to Section 300 shall be
18 limited as follows:

19 (A) If a juvenile case file, or any portion thereof, is privileged
20 or confidential pursuant to any other state law or federal law or
21 regulation, the requirements of that state law or federal law or
22 regulation prohibiting or limiting release of the juvenile case file
23 or any portions thereof shall prevail. Unless a person is listed in
24 subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled
25 to access under the other state law or federal law or regulation
26 without a court order, all those seeking access, pursuant to other
27 authorization, to portions of, or information relating to the contents
28 of, juvenile case files protected under another state law or federal
29 law or regulation, shall petition the juvenile court. The juvenile
30 court may only release the portion of, or information relating to
31 the contents of, juvenile case files protected by another state law
32 or federal law or regulation if disclosure is not detrimental to the
33 safety, protection, or physical or emotional well-being of a child
34 who is directly or indirectly connected to the juvenile case that is
35 the subject of the petition. This paragraph shall not be construed
36 to limit the ability of the juvenile court to carry out its duties in
37 conducting juvenile court proceedings.

38 (B) Prior to the release of the juvenile case file or any portion
39 thereof, the court shall afford due process, including a notice of

1 and an opportunity to file an objection to the release of the record
2 or report to all interested parties.

3 (4) A juvenile case file, any portion thereof, and information
4 relating to the content of the juvenile case file, may not be
5 disseminated by the receiving agencies to any persons or agencies,
6 other than those persons or agencies authorized to receive
7 documents pursuant to this section. Further, a juvenile case file,
8 any portion thereof, and information relating to the content of the
9 juvenile case file, may not be made as an attachment to any other
10 documents without the prior approval of the presiding judge of the
11 juvenile court, unless it is used in connection with and in the course
12 of a criminal investigation or a proceeding brought to declare a
13 person a dependent child or ward of the juvenile court.

14 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E),
15 (F), (H), and (I) of paragraph (1) may also receive copies of the
16 case file. In these circumstances, the requirements of paragraph
17 (4) shall continue to apply to the information received.

18 (b) (1) While the Legislature reaffirms its belief that juvenile
19 court records, in general, should be confidential, it is the intent of
20 the Legislature in enacting this subdivision to provide for a limited
21 exception to juvenile court record confidentiality to promote more
22 effective communication among juvenile courts, family courts,
23 law enforcement agencies, and schools to ensure the rehabilitation
24 of juvenile criminal offenders as well as to lessen the potential for
25 drug use, violence, other forms of delinquency, and child abuse.

26 (2) Notwithstanding subdivision (a), written notice that a minor
27 enrolled in a public school, kindergarten to grade 12, inclusive,
28 has been found by a court of competent jurisdiction to have
29 committed any felony or any misdemeanor involving curfew,
30 gambling, alcohol, drugs, tobacco products, carrying of weapons,
31 a sex offense listed in Section 290 of the Penal Code, assault or
32 battery, larceny, vandalism, or graffiti shall be provided by the
33 court, within seven days, to the superintendent of the school district
34 of attendance. Written notice shall include only the offense found
35 to have been committed by the minor and the disposition of the
36 minor's case. This notice shall be expeditiously transmitted by the
37 district superintendent to the principal at the school of attendance.
38 The principal shall expeditiously disseminate the information to
39 those counselors directly supervising or reporting on the behavior
40 or progress of the minor. In addition, the principal shall disseminate

1 the information to any teacher or administrator directly supervising
2 or reporting on the behavior or progress of the minor whom the
3 principal believes needs the information to work with the pupil in
4 an appropriate fashion, to avoid being needlessly vulnerable or to
5 protect other persons from needless vulnerability.

6 Any information received by a teacher, counselor, or
7 administrator under this subdivision shall be received in confidence
8 for the limited purpose of rehabilitating the minor and protecting
9 students and staff, and shall not be further disseminated by the
10 teacher, counselor, or administrator, except insofar as
11 communication with the juvenile, his or her parents or guardians,
12 law enforcement personnel, and the juvenile's probation officer
13 is necessary to effectuate the juvenile's rehabilitation or to protect
14 students and staff.

15 An intentional violation of the confidentiality provisions of this
16 paragraph is a misdemeanor punishable by a fine not to exceed
17 five hundred dollars (\$500).

18 (3) If a minor is removed from public school as a result of the
19 court's finding described in subdivision (b), the superintendent
20 shall maintain the information in a confidential file and shall defer
21 transmittal of the information received from the court until the
22 minor is returned to public school. If the minor is returned to a
23 school district other than the one from which the minor came, the
24 parole or probation officer having jurisdiction over the minor shall
25 so notify the superintendent of the last district of attendance, who
26 shall transmit the notice received from the court to the
27 superintendent of the new district of attendance.

28 (c) Each probation report filed with the court concerning a minor
29 whose record is subject to dissemination pursuant to subdivision
30 (b) shall include on the face sheet the school at which the minor
31 is currently enrolled. The county superintendent shall provide the
32 court with a listing of all of the schools within each school district,
33 within the county, along with the name and mailing address of
34 each district superintendent.

35 (d) (1) Each notice sent by the court pursuant to subdivision
36 (b) shall be stamped with the instruction: "Unlawful Dissemination
37 Of This Information Is A Misdemeanor." Any information received
38 from the court shall be kept in a separate confidential file at the
39 school of attendance and shall be transferred to the minor's
40 subsequent schools of attendance and maintained until the minor

1 graduates from high school, is released from juvenile court
2 jurisdiction, or reaches the age of 18 years, whichever occurs first.
3 After that time the confidential record shall be destroyed. At any
4 time after the date by which a record required to be destroyed by
5 this section should have been destroyed, the minor or his or her
6 parent or guardian shall have the right to make a written request
7 to the principal of the school that the minor's school records be
8 reviewed to ensure that the record has been destroyed. Upon
9 completion of any requested review and no later than 30 days after
10 the request for the review was received, the principal or his or her
11 designee shall respond in writing to the written request and either
12 shall confirm that the record has been destroyed or, if the record
13 has not been destroyed, shall explain why destruction has not yet
14 occurred.

15 ~~Except~~

16 (2) *Except* as provided in paragraph (2) of subdivision (b), no
17 liability shall attach to any person who transmits or fails to transmit
18 any notice or information required under subdivision (b).

19 (e) For purposes of this section, a "juvenile case file" means a
20 petition filed in any juvenile court proceeding, reports of the
21 probation officer, and all other documents filed in that case or
22 made available to the probation officer in making his or her report,
23 or to the judge, referee, or other hearing officer, and thereafter
24 retained by the probation officer, judge, referee, or other hearing
25 officer.

26 (f) The persons described in subparagraphs (A), (E), (F), (H),
27 (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include
28 persons serving in a similar capacity for, ~~or an authorized~~
29 ~~representative of,~~ an Indian tribe, reservation, or tribal court when
30 the case file involves ~~an Indian child~~ *a child who is a member of,*
31 *or who is eligible for membership in, that tribe.*